

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

KEITH ALLEN SIZEMORE,
SHANE ALLEN SIZEMORE,

Plaintiff,

vs.

Civil Action No. :

S.R. MORRIS, C.A. YOUNG,
individually, and FAYETTE
COUNTY COMMISSION,
a political subdivision of the
State of West Virginia, TOWN
OF OAK HILL, a political
subdivision of the State of
West Virginia,

Defendants.

COMPLAINT

This complaint, brought pursuant to 42 U.S.C. Section 1983, the Fourth Amendment to the United States Constitution, arises out of the Defendants' commission of an unreasonable search and seizure on the Plaintiff on or about September 7, 2017 in Fayette County, West Virginia, within the Southern District of West Virginia.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1334.

PARTIES

1. The Plaintiff, Keith Allen Sizemore, was at all times relevant hereto a resident of Oak Hill, Fayette County, West Virginia, within the Southern District of West Virginia. Plaintiff Shane Allen Sizemore is the son of Keith Allen Sizemore, and

currently is enrolled in college in Morgantown, West Virginia, but still resides with his father. He is now over the age of eighteen.

2. Defendant S.R. Morris is and was at all times relevant hereto, a resident of Fayette County, West Virginia, PO Box 974, Summersville, WV 26651 and is employed by the Fayette County Sheriff's Department, and assigned to the Central West Virginia Drug Task Force. He is named in his individual capacity.

3. Defendant C.A. Young is and was at all times relevant hereto, a resident of Fayette County, West Virginia, PO Box 974, Summersville, WV 26651 and is employed by the Oak Hill Police Department, and assigned to the Central West Virginia Drug Task Force. He is named in his individual capacity.

4. Defendant Fayette County Commission ("FCC") is a political subdivision of the State of West Virginia, and as such, is liable for the negligent conduct of its agents and employees, including the Sheriff, the Sheriff's Department, and the employees of the Sheriff's Department, so long as that conduct was carried out within the scope of their employment. *See* West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1, *et seq.*

5. Defendant Town of Oak Hill is a political subdivision of the State of West Virginia, and as such, is liable for the negligent conduct of its agents and employees, including the employees of the Oak Hill Police Department, so long as that conduct was carried out within the scope of their employment. *See* West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1, *et seq.*

FACTS

6. On July 10, 2017, Detective-Sergeant S.R. Morris, of the Fayette County, West Virginia, Sheriff's Department, while assigned to the Central West Virginia Drug Task Force, received a tip that the plaintiff was transporting heroin in a pickup truck.

7. The officers conducted a traffic stop on the plaintiff's truck. They found a small quantity of marijuana, for which passenger Melissa Figueroa admitted ownership. A search of the truck did not uncover the expected presence of heroin. Melissa Figueroa was the significant other and friend of the plaintiff's daughter, Amber Evans.

8. Officers then obtained a search warrant for the plaintiff's truck, and towed the vehicle to the City of Oak Hill service garage, and conducted a further search. No drugs were found during the search.

9. Following the fruitless search, Defendant Morris, and two DEA agents, traveled to the plaintiff's residence in Oak Hill, West Virginia, to interview him. One of them knocked on the door, and when the plaintiff answered, Defendant Morris observed Melissa Figueroa and Amber Evans, inside the plaintiff's residence, but did not speak to them. Morris spoke to the plaintiff on the porch of the home, but did not enter.

10. No further investigation of the matter was undertaken, and the truck was returned to the plaintiff the following day.

11. Nearly two months later, on September 7, 2017, Defendants Morris and Young observed Melissa Figueroa at the Dollar Tree parking lot in Oak Hill, and observed her handing something to an individual, for which she received money in return. The two officers then observed Figueroa leave the parking lot in a gold Ford Taurus.

12. Morris then approached the buyer and questioned him, resulting in the buyer admitting that he had purchased \$80.00 of heroin from Figueroa, which is

approximately a fraction of a gram of heroin. The buyer thereafter agreed to cooperate with Morris and Young as a confidential informant.

13. Morris and Young were planning to set up a second buy from Figueroa later that day. At some later point, but prior to the second buy, the officers were driving by the plaintiff's residence, and they saw the same gold Ford Taurus parked on the street in front of the plaintiff's home. They did not see Melissa Figueroa.

14. The officers equipped the new confidential informant posing as a buyer with recording devices, prerecorded money, and arranged the buy. They positioned themselves outside of the plaintiff's residence. They observed Melissa Figueroa and her sister, Christine Figueroa, come out of the residence and get into a Dodge Neon. The Neon was parked in the same location they had seen the gold Ford Taurus earlier that day.

15. The Neon drove to the Dollar Tree parking lot, with Melissa Figueroa as a passenger, where the transaction took place as anticipated. Following the buy, the officers observed the Dodge Neon return to the plaintiff's residence, but did not observe Melissa Figueroa exit the vehicle nor enter the residence.

16. Defendant Morris then went to the Fayette County Sheriff's Department to draft an application for a search warrant for the plaintiff's residence.

17. In his affidavit in support of the search warrant, Defendant Morris attested to several false statements.

18. Morris attested that he had observed the gold Ford Taurus in front of the plaintiff's residence soon after the first buy, and that they had prior knowledge that Melissa Figueroa lived or stayed at the plaintiff's residence. The affidavit then referred

to their alleged “prior knowledge” a second time in the affidavit. According to the U.S. District Court for the Southern District of West Virginia, “[i]n reality, neither of those two officers had any such prior knowledge.” (Case 2:18-cr-00198, Document 58, at 6).

19. Morris attested that he and Young witnessed Figueroa come out of the plaintiff’s residence and get into the Dodge Neon to travel to the Dollar Tree parking lot for the second buy, after which he and Young followed Figueroa and her sister, who were in the Neon, back to the location of the plaintiff’s residence. However, according to the U.S. District Court, “[t]he officers simply made another drive-by. They did not see Figueroa exit that vehicle or enter the residence.” (Case 2:18-cr-00198, Document 58, at 6).

20. The search warrant was signed by the magistrate around 9:00 p.m. that night, and the defendant officers immediately executed the warrant at the plaintiff’s residence. Plaintiff was sitting in his living room when the officers arrived. His 16 year old son was in the home with him. Officers threw a concussion grenade through his living room window, then busted through his door with a sledgehammer. They handcuffed plaintiff, and put him on his porch, took his son from him, and proceeded to search his house.

21. In the search, they found heroin, two firearms, about \$2,000.00 in currency, and arrested the plaintiff. What they did not find, however, was Melissa Figueroa - nor any of her possessions. Nor did they find the prerecorded money from the second buy with the informant.

22. According to the U.S. District Court, Defendant Morris’ affidavit, in which twice he claimed that he and defendant Young had prior knowledge that Figueroa “lived

and stayed at ‘the defendant’s Wood Avenue address,’” is not supported by the limited observations they had made. (Case 2:18-cr-00198, Document 58, at 7).

23. According to the U.S. District Court, “the officers had no basis whatever from those bare observations to conclude that Figueroa “lived or stayed at” the plaintiff’s residence.” (Case 2:18-cr-00198, Document 58, at 7).

24. According to the U.S. District Court, “Sgt. Morris’ false statement that the officers had prior knowledge that Figueroa “lived or stayed at” the [plaintiff’s] residence was calculated to mislead the magistrate into the belief that there was probable cause to believe heroin could be found at that location.” (Case 2:18-cr-00198, Document 58, at 9).

25. Morris further omitted from his warrant affidavit that there was a small amount of heroin involved in the two transactions involving Figueroa. The initial buy was \$80.00 of heroin, which is approximately a fraction of a gram, and the second buy of \$80.00 indicates the same small amount. The factual implication of the small amounts is that Morris had knowledge that such a small amount of heroin could have easily been transported on Figueroa’s person in her clothing, rather than having utilized plaintiff’s residence to enable the transactions.

26. According to the U.S. District Court, the affidavit by Morris “states that ‘we’ had prior knowledge where Figueroa lived or stayed when neither knew that to be true. The use of ‘we’ was designed to fortify the false allegation being made.” (Case 2:18-cr-00198, Document 58, at 9).

27. At the time the affidavit was presented to the magistrate, neither defendants Morris nor Young knew from whence Figueroa had come when she made

the first sale at the Dollar Tree parking lot. She had been driving her ex significant other's (Amber Evans) Ford Taurus, because her vehicle was in the shop for repairs. Amber Evans is the plaintiff's daughter, which provides numerous legitimate reasons for her to be at plaintiff's home.

28. The officers knew only that the Dodge Neon was driven back to the plaintiff's residence, but they did not know whether Figueroa entered the residence. What they would learn some two and a half hours later when the search warrant was executed, was that Figueroa was not there and neither were any of her belongings. Moreover, none of the \$2,282.00 seized in the plaintiff's home was prerecorded money supplied by the officers for the second buy.

29. The sole supporting basis for the affidavit turns on the sale of a meager amount of heroin by one who, in the course of making the sale, has paid a visit to the home of another. Armed only with that limited circumstance, defendant Morris sought a search warrant of the place visited by the small time dealer. Doubtless recognizing the weakness of the premise for a search of the home, Morris added the following unsubstantiated paragraph:

Members of the Central West Virginia Drug Task Force have received numerous complaints about the sale and distribution of heroin from this residence. Members of the Task Force have received numerous complaints about other subjects who are known to live or stay at the residence described. Those subjects are Keith Sizemore and Amber Evans.

(Case 2:18-cr-00198, Document 58, at 10-11). According to the U.S. District Court, “[t]here is not an iota of evidence to support that gratuitous allegation.” Moreover, the allegation that there were complaints about the plaintiff and Amber Evans, “[t]hat too, is alleged without a whit of evidence.” (Case 2:18-cr-00198, Document 58, at 11).

30. The U.S. District Court also noted that, “just as Figueroa was falsely stated by Sgt. Morris to have lived or stayed at the Sizemore residence, so too is the unproved allegation that Amber Evans lived or stayed there. She did not. Sgt. Morris has since admitted that he did not know where Evans lived or stayed and, as with Figueroa, he had made no investigation to find out. Rather, he simply saw Evans there on the evening of July 12th and made the same unwarranted assumption about Evans as he had made about Figueroa. (Case 2:18-cr-00198, Document 58, at 12).

31. In an order finding that the search warrant for the plaintiff’s residence was unconstitutional, the District Court found that:

Under a totality of the circumstances analysis, the only facts of which Sgt. Morris had knowledge that were in any sense relevant to the issuance of the search warrant sought, were the two small-time sales in the Dollar Tree parking lot. Only one of those sales significantly related, however obscurely, to the Sizemore house in that the officers witnessed Figueroa leave from that point while on her way to make the second sale.

In particular, without the false statement that Figueroa lived or stayed at the Sizemore house, coupled with the false statement that the officers had prior knowledge of that allegation, there was simply no adequate ground on which to base the search of another man’s house.

The [plaintiff] was the sole owner of that residence searched. It was his home, as well as that of his 16-year-old son, and he had a legitimate expectation of privacy in it. The search warrant obtained for his residence was sought without any basis for it, and its execution was a clear violation of the Fourth Amendment to the United States Constitution as an unreasonable search and seizure

As a consequence, the Motion to Suppress Evidence is granted as to the evidence seized from the [plaintiff’s] home, as well as the [plaintiff’s] confession that soon followed that same evening.”

(Case 2:18-cr-00198, Document 58, at 13-14.)

32. Following the District Court’s finding that the search was illegal, the criminal charges against the plaintiff were dropped. However, by that time, plaintiff had

already lost everything he owned due to civil forfeiture proceedings, which shockingly had been filed and prosecuted prior to the plaintiff even being indicted criminally.

33. As a result of the illegal search and the ensuing civil forfeiture proceedings, the plaintiff lost his home, which was confiscated; he lost his 2017 pickup truck, which was confiscated; and he spent a substantial amount of time incarcerated.

**COUNT ONE - UNREASONABLE SEIZURE IN VIOLATION OF
THE FOURTH AMENDMENT**

34. Plaintiff hereby incorporates the previous paragraphs as though fully restated herein.

35. Defendants Morris and Young caused a search of the plaintiff's home and a seizure of the plaintiff's person pursuant to a legal process when they submitted an affidavit, utilizing both of their names, experience, and testimony, signed by Defendant Morris, to the Magistrate Court of Fayette County, and signed by Magistrate Young, who is the mother of Defendant Young.

36. The said legal process was unsupported by probable cause due to the fact that Defendant Morris and Young included false allegations:

- a. They falsely swore twice that they had "prior knowledge" that Melissa Figueroa lived at the plaintiff's residence, when in fact neither of the defendant police officers had such knowledge.
- b. They also falsely swore that they observed Melissa Figueroa return to the plaintiff's residence following the second buy, when in fact, the officers simply performed a drive-by, and did not actually witness Figueroa exit the vehicle, nor enter the plaintiff's residence.

c. They also made a material and misleading omission in the affidavit regarding the small amount of heroin involved in the two Dollar Tree parking lot buys, which was relevant to establishing a connection with the plaintiff's home to the two buys.

d. Moreover, the use of the word, "we" in the affidavit - referring to both Morris and Young - was designed to fortify the false allegation being made - especially in light of the fact that the magistrate who received the false allegations was Danita Young, Defendant Young's mother.

e. Lastly, Morris and Young included allegations in the warrant affidavit stating that they had received numerous complaints about drug activity at the residence, and drug activity involving the plaintiff and his daughter, Amber Evans. However, the U.S. District Court for the Southern District of West Virginia, in finding the search warrant unconstitutional, made the finding that these statements were false, and wholly unsupported by any evidence.

37. The criminal proceedings instituted by Defendants Morris and Young against the plaintiff were dismissed favorably to the plaintiff. The U.S. District Court for the Southern District of West Virginia noted that, "The search warrant obtained for [plaintiff's] residence was sought without any basis for it, and its execution was a clear violation of the Fourth Amendment to the United States Constitution as an unreasonable search and seizure . . ."

38. No objectively reasonable police officer would have believed that probable cause existed to charge the plaintiff with a crime, or that there was illegal drugs in the

plaintiff's home, based on the information available to Morris and Young at the time they submitted the warrant application. As the District Court noted, "[t]he sole supporting basis for the affidavit turns on the sale of a meager amount of heroin by one who, in the course of making the sale, has paid a visit to the home of another."

39. Defendants Morris and Young knowingly and intentionally, or with a reckless disregard for the truth, made false statements, as described above in detail, in their affidavit which would have informed the magistrate of facts she knew would have negated probable cause. Although Morris signed the affidavit, his use of the word, "we" as well as knowledge allegedly held by Young being alleged therein, implies that both defendant officers jointly participated in the warrant submission - as corroborated by the fact that both officers subsequently participated in the execution of the warrant at the plaintiff's residence.

40. The said false statements and omissions were material and necessary to the magistrate's finding of probable cause. As the District Court noted in finding a constitutional violation, "[i]n particular, without the false statement that Figueroa lived or stayed at the Sizemore house, coupled with the false statement that the officers had prior knowledge of that allegation, there was simply no adequate ground on which to base the search of another man's house."

41. Defendant Morris and Young's misstatements and omissions were an attempt to mislead the otherwise neutral and detached magistrate. The District Court found that, "Sgt. Morris' false statement that the officers had prior knowledge that Figueroa "lived or stayed at" the [plaintiff's] residence was calculated to mislead the

magistrate into the belief that there was probable cause to believe heroin could be found at that location."

42. The said false statements and omissions were material and necessary to the magistrate's finding of probable cause, as noted by the District Court.

43. Defendant Morris and Young's actions as alleged herein were performed under color of law, objectively unreasonable, willful, wanton, intentional and done with a callous and reckless disregard for the plaintiff's Fourth Amendment rights to be free from unreasonable search and seizure.

44. Plaintiff suffered harm for which he is entitled to recover.

COUNT TWO - STATE LAW NEGLIGENCE CLAIM

45. Plaintiff hereby incorporates the previous paragraphs as though fully restated herein.

46. The defendant political subdivisions, the FCC and the Town of Oak Hill, who were the employers of the defendant police officers at the relevant times while they were acting within the scope and course of their employment, specifically owed the plaintiff a duty of reasonable care. It was reasonably foreseeable to the said political subdivisions that plaintiff and other individuals would be damaged by being subjected to unreasonable searches and seizures based on a pattern, practice and activity of providing false information to the Magistrate Court of Fayette County in order to secure search warrants unsupported by the law. It was furthermore reasonably foreseeable to the defendants that allowing police officers to operate outside the bounds of the U.S. Constitution, with little to no supervision and training, in order to seize assets for profit,

through misuse of the West Virginia state civil forfeiture statute, is going to harm citizens who should otherwise be protected from illegal search and seizure.

47. Defendant political subdivisions, by and through their agents and employees, Morris and Young, respectively, as detailed above and incorporated herein, committed an unreasonable search and seizure of the plaintiff and his home on September 7, 2017, in violation of the Fourth Amendment of the U.S. Constitution, by making false statements and material omissions in their affidavit to the Magistrate Court of Fayette County. In so doing, the officers were acting in accordance with their training and supervision, which was effectively negligent in that it consisted of a pattern, practice, and activity of acting outside the law for purpose of pecuniary gain via the state civil forfeiture statute. Effectively unsupervised and undertrained by their employers, the defendant officers were operating outside the bounds of the U.S. Constitution, in a scheme primarily concerned with seizing assets to be converted to their own ownership (the FCC and Town of Oak Hill) through the civil forfeiture statute. Since the political subdivision defendants themselves were profiting from the scheme, they instituted an official policy of “turning a blind eye” to the officers’ activities, and allowed an environment of lawlessness to exist, with no supervision, and no concern towards training.

48. Indeed, the plaintiff’s assets were seized and converted to the defendant’s ownership through the civil forfeiture statute, prior to the criminal indictment of the defendant. Such a practice shows the primary motive of the defendant political subdivisions is profit, rather than law enforcement. Such a practice and motive directly caused substantial damage to the plaintiff, including the loss of his home and truck.

49. As a direct result of FCC and the Town of Oak Hill's negligence, plaintiff suffered harm for which he is entitled to recover.

PRAYER

WHEREFORE, based on the above stated facts, the Plaintiffs respectfully request that this Honorable Court award:

1. Damages against the Defendants in an amount to be determined at trial which will fairly and reasonably compensate the Plaintiff for:
 - a. Past, present and future medical expenses;
 - b. Past, present and future pain and suffering;
 - c. Loss of enjoyment of life;
 - d. Psychological and emotional distress;
 - e. Any other compensatory damages to be proven at trial;
 - f. Punitive damages against the individual Defendants in an amount to be determined at trial;
 - g. Reasonable attorney fees and costs;
 - h. Any other relief that this Court deems is just and fair;
 - i. All other damages provided by law;
 - j. Injunctive relief requiring appropriate training, supervision and discipline in order to remedy all constitutional deprivations which the Plaintiff suffered;
 - k. Declaratory judgment relief establishing the Defendants' above-described conduct violates the Plaintiff's clearly established constitutional rights.

PLAINTIFFS DEMAND A TRIAL BY JURY

KEITH ALLEN SIZEMORE,
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By Counsel

/s John H. Bryan

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